IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 858 of 1987
with
CRIMINAL APPEAL No 79 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOPALBHAI OGHADBHAI PAREKH

Versus

STATE OF GUJ.

Appearance:

1. Criminal Appeal No. 858 of 1987
MR JIVANLAL G SHAH for Petitioner
MR SP DAVE,APP for Respondent No. 1

2. Criminal AppealNo 79 of 1988
MR SP DAVE,APP for Petitioner
MR JIVANLAL G SHAH for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS
and
MR.JUSTICE J.R.VORA

Date of decision: 17/08/2000

ORAL JUDGEMENT (Per K.R.Vyas,J.)

1. The appellant- Gopalbhai Parekh, serving as an Extension Officer of Bhachau Taluka Panchayat at the relevant time was charged for the offences punishable under section 161 of the Indian Penal Code read with section 5(1)(d) and 5(2) of the Prevention of Corruption Act,1947 (old Act) by the learned Special Judge, Kutch at Bhuj for accepting illegal gratification of Rs. 150/from the complainant. The original - accused no.2 Khoda Ranchhod Ayer was charged for the offence punishable under section 165-A of the Indian Penal Code for abetting the accused no.1. At the end of the trial, the learned judge, by his judgment and order dated 4th November 1987 passed in Special Case No. 2 of 1985, convicted the accused no.1 for offence punishable under section 5(2) of the Prevention of Corruption Act and sentenced to suffer R.I. for one year and a fine of Rs. 500/-, in default, to undergo S.I. for six months. The said accused was also convicted for offence punishable under section 161 of the Indian Penal Code and was sentenced to suffer R.I. for one year. The learned judge ordered both the sentences to run concurrently. The accused no.2 was, however, acquitted of the offences for which he was charged. The original accused no.1 has filed Criminal Appeal No. 858 of 1987 while the State of Gujarat has filed Criminal Appeal No. 79 of 1988 challenging the order of acquittal passed in favour of the accused no.2. Both the appeals are heard together and disposed of by this common judgment.

2. The prosecution case as stated in the complaint Ex. 24 given by complainant Ranchhod Arjan Ayer,and as per the evidence of Investigating Officer Shri Sharma, can be stated as under:

The complainant is an agriculturist and maintains cattle for the purpose of his livelihood. The complainant and his brother wanted to purchase buffaloes and, therefore, for the purpose of taking loan from the bank, they obtained necessary form from the village talati and after filling the same, handed over to the accused no.1 for preparing loan papers and to submit in Dena Bank, Bhachau. The bank sanctioned loan of Rs. 2700/-. The complainant purchased buffalo from one Rana Bhacha. It is the case of the complainant that for preparing the loan papers, the accused no.1 took Rs. 100/- from him and instructed him to pay the remaining amount of Rs. 200/- after one month. The complainant in the company of Rana Bhacha went to the bank and obtained the cheque in the name of Rana Bhacha. After encashing the cheque, the complainant took an amount of Rs.

200/from Rana Bhacha and gave it to accused no.1. Another loan in favour of the complainant for the purpose of purchasing buffalo was sanctioned in which the complainant purchased buffalo from one Sava Vira. When the complainant was informed about the same by the accused no.1, the complainant went to the bank in the company of Sava Vira at Bhachau town. The accused no.1 demanded Rs. 300/- for the work done by him of sanctioning loan. According to the complainant, the accused no.1 accompanied them in Dena Bank and recommended the case of the complainant to the bank officers. When the accused no.1 demanded the amount from the complainant, he told the accused no.1 that he would make the payment lateron. According to the complainant, the accused no.1 used to demand the amount through different persons of his village. The complainant has further alleged that two to three days prior to the complaint, he had gone to Bhachau town for his own work. He met the accused no.1 at panchayat office. At that time, the accused no.1 demanded Rs. 300/- for sanctioning the loan.The complainant told him that at that time he was not in a position to pay the amount because of the drought condition. The accused no.1 thereafter told to make arrangement for money on the next day and also informed him to pay at least half of the amount at his residence or at his office, failing which the complainant will not get any amount of loan or subsidy. The complainant accordingly filed a complaint stating that the accused no.1 had illegally demanded Rs. 300/- and asked him to pay half of the amount immediately and, therefore, he had brought the amount of Rs. 150/-. The said complaint was recorded by Police Inspector, ACB, Bhuj Shri Hakemchand D.Sharma at about 12.45 p.m. on 16th October 1987. Thereafter, Police Inspector Shri Sharma called two persons from the Sales Tax Office to act as panchas and two persons Tulsidas Khemchand, PW 2 and Baldevbhai Pithubhai Chaudhari came there. They also signed below the complaint. The complainant was asked to produce currency notes for the purpose of giving the same to the accused no.1 when demanded. Accordingly, the complainant took out three currency notes of Rs. 50/each from the left pocket of his shirt. Their numbers were noted down in the panchanama. Thereafter, Police Constable Rajendra Jadeja was asked to do the test of anthracene powder and ultra violate lamp on the said currency notes. According, Police Constable Rajendra Jadeja took out anthracene powder and lamp from the cupboard. The notes were shown to the panchas and the complainant in ordinary light. However, no stains or marks were noticed on the same. Police Constable Jadeja showed his hands in the ordinary light and nothing was

noticed on the same. Even after putting the ultra violet lamp on,no stains or marks were noticed either on the hand or on the muddamal currency notes. Mr. Jadeja thereafter took out the bottle containing anthracene powder. The three currency notes were placed on a blank paper and anthracene powder was applied to the notes on both the sides with the help of cotton. The notes were thereafter shown in the ordinary light. However, nothing was noticed on the said notes. Thereafter the said notes were kept in front of the ultra violet lamp and emission of light blue fluorescent was noticed. The said emission of light blue fluorescent was also found on the finger tips of Police Constable Jadeja. Police Constable Jadeja was asked to keep the currency notes in the left pocket of the shirt of the complainant. Accordingly, he kept the notes in the left pocket of the shirt of the complainant by folding the same. Thereafter, the blank paper was destroyed and the bottle of anthracene powder was kept in the cupboard. The Police Constable thereafter washed his hands by soap. The complainant was thereafter instructed to meet the accused no.1 Gopalbhai either at his office or at his residence and to talk to him about the loan and to give him the currency notes as and when the demand is made and till then not to touch the notes. The panch no.1 was asked to accompany the complainant and hear the talks between them and to watch the proceedings. He was further instructed to come out no sooner the accused no.1 accepts the amount and give a signal by keeping his hand over his head. The panch no.2 was instructed to remain with the raiding party. The raiding party was instructed to station themselves either in the vicinity of the Office of the Extension Officer or the house and to reach at the spot as and when signal was given. Police Constable Jadeja was instructed to make himself available with ultra violet lamp and to come to the spot when asked. Again Police Constable Jadeja was asked to put on the ultra violet lamp and the hands of all were examined in front of the lamp. However, no stains or marks were noticed. All the aforesaid details were reduced in writing in the panchanama Ex. 20. The panchanama was read over to the panchas and their signatures were obtained. The panchanama was completed at about 13.45 hours. All the members of the raiding party including the panchas and the complainant thereafter went by Government jeep to Bhachau town and stationed the jeep one-and-half k.ms. away from Bhachau at about 4.00 o'clock. Thereafter, all of them started walking and reached at about 4.30 p.m., the Office of the Taluka Panchayat where the accused no.1 was serving. The panch no.1 and the complainant went inside the office while the raiding party including the panch no.2 kept

themselves away out of the office at scattered places. At about 4.45 p.m., the panch no.1 came out of the office and gave a signal by keeping his hand over his head and on seeing the same, the members of the raiding party entered the office.The panch no.1 informed them that the person who accepted the amount had gone in the adjoining room. Thereafter, the raiding party entered the adjoining room. The Police Inspector Sharma in the company of the complainant, on getting the name of accused no.1 from the panch no.1, introduced himself. Thereafter, Police Constable Jadeja was asked to see the hands of the members of the raiding party except the complainant and the accused no.1 and 2 before the ultra violet lamp. However, nothing was noticed on their fingers and hands. However, on the finger tips of both the hands of the accused no.2, emission of blue light fluorescent was seen. The accused no.1,thereafter when asked to produce the muddamal, he produced a folded handkerchief from the right pocket of his pant and kept it on the table. On unfolding the same,three currency notes of Rs. 50/- each were found. The panch no.2, thereafter on being asked to pick up the notes, he picked up the same and the numbers of the said notes were compared with the numbers of the notes mentioned in the first part of the panchanama and they were found to be the same. Police Constable Jadeja again examined the notes before the ultra violet lamp and emission of light blue fluorescent on both the sides of the notes was noticed. The panchas signed the muddamal. The hands of panch no.2 as well as the complainant were seen in the light of ultra violet lamp and the emission of light blue fluorescent was noticed. Even the wallet of the complainant which was inside the left pocket of the shirt showed emission of light blue fluorescent and the same was recovered under a panchanama. The receipts regarding seizure of currency notes as well as handkerchief were prepared. Two copies were prepared under the panchanama and one was given to the accused no.1 after obtaining his signature. All these details were stated in the panchanama. The signatures of panchas were also taken and the panchanama was completed at about 6.15 p.m. on the same day. The panchas as well as Police Inspector Shri Sharma signed the same at the end of the panchanama. Police Inspector Sharma thereafter recorded the statement of staff members of the office and thereafter went to village Karamaria with the complainant where the statements of the brothers of the complainant were recorded. On 3.8.1984, on reaching Bhuj, after obtaining necessary sanction to prosecute the accused, complaint was filed and offence was registered against the accused.

The aforesaid facts,in details, are given by us with a view to avoid unnecessary repetition while appreciating the evidence on record.

3. As stated above, the learned Special Judge, Kutch at Bhuj, who tried the case against the accused, after appreciating the evidence on record, found the case against accused no.1 proved and convicted him for the offence punishable under section 5(2) of the Prevention of Corruption Act and section 161 of the IPC. However, acquitted the accused no.2 for want of evidence.

4. Mr. J.G.Shah, learned Counsel appearing for the appellants- accused challenged the judgment of the trial court on various grounds. Mr. Shah contended that the complainant in the instant case, has not supported the prosecution and, therefore, no reliance can be placed on the so-called admission in the cross examination when he was declared hostile. In the submission of Mr. Shah, previous statement of the witness cannot be used as a substantive piece of evidence. In support of his argument,he has relied upon the decision of the Supreme Court in the case of Chinnammal Vs.State of Tamil Nadu, 1997 (1)SCC 145. Mr. Shah also contended that even though the panch no.2 was available, the prosecution has not examined him and, therefore, the evidence regarding recovery of currency notes is required to be ignored. Mr. Shah then submitted that since the investigating officer in the instant case has used anthracene powder for the trap and no explanation is given as to why phenolphthalein powder was not used and when the witnesses are not clear about what they have seen on the hands of the accused or the currency notes, the accused no.1 cannot be held guilty of the offence for which he is charged. In support of his submission, reliance is placed on the decision of this Court in the case of Gopalla Ghisulal Chhipa Vs. State, 1999(1) GLR 546 and the decision of the apex court in the case of Khilli Ram Vs. State of Rajasthan, 1985 SCC (Cr) 24 and the decisions of Allahabad High Court in the case of Devendra Naraian Vs. State of UP, 1993 (3) Crimes 167. Mr. Shah finally submitted that the panchanama Ex. 20 cannot be relied upon as it is not a substantive piece of evidence. To substantiate his submission, he has relied upon the decision of this Court in the case of Naginlal Nandlal Vs. State, 1961 GLR 664.

5. Mr.S.P.Dave, learned APP on the other hand, appearing for the State, while supporting the reasons of the learned Judge, submitted that even while ignoring the evidence of the complainant who has not supported the

prosecution in the instant case, conviction can be based on the evidence of the Investigating Officer. In the submission of Mr. Dave, nothing is alleged against the Police Inspector Shri Sharma and/or other prosecution witnesses who have no axe to grind against the accused. Mr. Dave, to substantiate his submission, relied upon the decision of the apex court in the case of Hazarilal Vs. State, AIR 1980 SC 873.

6. The prosecution, in the instant case, to bring home the charge levelled against the accused, examined complainant Ranchhodlal Arjun, PW 1 Ex.18, Panch no.1 Tulsidas, PW 2 Ex. 19, colleague of accused no.1 in the office Manoharlal Chavda, PW 3 Ex. 24 and Police Inspector H.D.Sharma, PW 4 Ex.23. Having perused the evidence of the complainant Ranchhod Arujn, frankly speaking, he has not supported the prosecution. Instead of supporting his earlier version i.e. the complaint, he has altogether come out with an entirely a new case by introducing Karsan Kana. According to him, he had purchased a buffalo from one Karsan Kala and the said Karsan Kala had demanded Rs. 300/- from him for giving the same to accused no.1. Since he has not supported the prosecution case, he was permitted to be cross examined by the learned PP. In the cross examination,he has admitted to have stated that the accused no.1 had demanded Rs. 300/- for sanctioning second loan for purchase of buffalo and that the accused no.1 accompanied him to the bank and had recommended his case to the officers of the bank. He has also admitted that the accused no.1 had demanded half of the amount before the next date and to pay it either at his office or the residence and failing to do so, he will not get the loan or subsidy. He has also admitted the presence of panchas in the office of Police Inspector Shri Sharma and also admitted the panchanama duly signed by the panchas. He has also admitted that he had given three currency notes of Rs. 50/- each and the numbers of the notes were mentioned in the panchanama and the experiment of anthracene powder with ultra-violet lamp was carried out by Police Constable Jadeja. He has,however, denied having stated about the demand made by either accused no.1 or accused no.2 in the Office of the Taluka Panchayat.

Reading the evidence of the complainant,it is clear that even though he has admitted the existence of complaint Ex. 24 and panchanama Ex. 20 duly signed by him, he has not supported the prosecution regarding his earlier statement wherein he has specifically stated regarding the involvement of the accused when the demand

of illegal gratification was made and the same was accepted by him. May be because he has not supported the prosecution regarding the demand as well as acceptance of illegal gratification by the accused. We cannot ignore his admission even though in the cross examination by the learned PP, he has admitted the complaint given by him at Ex.24 and the panchanama prepared by the Investigating Officer at Ex. 20.

The Supreme Court,in the case of Bhagwansinh Vs. State of Haryana, AIR 1976 SC 202 has clearly laid down that where the Court gives permission to the prosecutor to cross examine its own witness,thus, characterising him as a hostile witness, that fact itself does not efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base conviction upon his testimony if corroborated by other reliable evidence. In view of this, it is not possible for us to accept the submission of Mr. Shah that the evidence of the complainant cannot be used as a substantive evidence as he has answered all the questions in the cross examination. Once the existence of the complaint as well as panchanama is accepted, the only thing which is required to be considered is whether the other witnesses corroborate the same or not. Thus, the evidence of the complainant in the instant case can be utilised for the limited purpose of proving the complaint as well as the panchanama.

7. The panch no.1 Tulsidas, PW 2 and Investigating Officer Police Inspector Sharma, PW 4 Ex. 23, in our opinion, proved the complaint Ex. 24 as well as panchanama Ex.20. In the judgment cited by Mr. Shah in the case of Naginlal Vs. State (supra), principle is laid down that the panchanama is not a substantive evidence. There cannot be any dispute with regard to the principle laid down in the said judgment. In our opinion, the panchanama is a corroborative piece of evidence which is required to be proved by substantive evidence. As stated above, the complainant has admitted in his evidence about the drawing up of the panchanama Ex. 20. Panch no. 1 Tulsidas, PW 2 has admitted the first as well as second part of drawing of panchanama Ex. 20. Panch Tulsidas who is a senior clerk in the Sales Tax Department at Bhuj, in his evidence,has stated that he was called as a panch by Police Inspector Sharma with another panch Baldevbhai Chaudhari and they were read over the complaint filed by the complainant. He has given details about the experiment of anthracene powder carried out by Constable Jadeja with ultra-violet lamp. Since we have already given the details about the

incident, it is not necessary to re-narrate the same. According to him, in his evidence, he has further stated that he and the complainant, after getting down from the Government jeep,had gone to the panchayat office. In the compound of the panchayat office, they found accused no.2 standing there. Thereafter, the accused no.1 also came there. The accused no.2 thereafter inquired from the complainant as to what happened to the talk to which the complainant replied that he had brought it. The accused no.2 thereafter said "Let us go". The accused no.1 and 2 and the complainant thereafter went inside the chamber of the President of Taluka Panchayat and the panch followed them and waited at the door of the chamber. The panch no.1 saw the complainant sitting in the first chair while in the second chair,the accused no.2 was sitting and in the third,the accused no.1 was sitting. The accused no.2 thereafter demanded the amount. The complainant took out his wallet containing the notes from the pocket of his shirt and took out notes from it and gave to accused no.2. The accused no.2 counted the notes and kept them in handkerchief and after folding it,gave to the accused no.1. The accused no.1 took the folded handkerchief and kept it in the back pocket of his pant and came out. The panch no.1 thereafter came out from the chamber and by putting his hand on his head, gave a signal. The raiding party thereafter came there. In the meantime, the accused no.1 had come out from the chamber of the President of the Taluka Panchayat and entered his own chamber. Panch Tulsidas has further stated that Police Inspector Sharma thereafter inquired from the staff as to who is Gopal Parekh to which the accused no.1 told that he was Gopal Parekh. Police Inspector Shri Sharma asked him to sit as it is and to take out the money. The accused no.1 took out money and kept on the table. The panch no.2 thereafter unfolded the handkerchief and examined the notes as well as their numbers and found stains on the handkerchief as well as on the fingers of accused no.2 in the ultra-violet light. Both the panchas thereafter signed the currency notes and were seized under panchanama and a receipt was given to the accused no.1. This witness has been cross examined at length. However,nothing substantial has been taken out from his evidence by the defence. It was contended by Mr. Shah that according to this witness, only the panch no.1 saw the notes after unfolding the handkerchief and examined the numbers and noticed stains on the handkerchief and on the hands of accused no.2 when shown before ultra-violet lamp. Since the panch no.2 has not been examined, this part of the evidence given by this witness panch Tulsidas is required to be ignored. It is not possible for us to accept this submission for the simple reason that he has

merely given the details about the accused no.2 unfolding handkerchief containing currency notes and noticing stains on the handkerchief and on the finger tips of accused no.2. It does not mean that he had not seen the currency notes when the handkerchief was unfolded. Similarly,it would be too much for us to assume that he had not seen stains on handkerchief as well as on the finger tips of accused no.2. In any case, since he was very much present when the handkerchief containing currency notes was unfolded and the experiment of ultra-violet lamp was carried out, in view of the fact that the currency notes as well as receipt acknowledging currency notes as well as handkerchief are on record,it cannot be contended that no such notes or handkerchief were found. He has specifically denied the suggestion that neither the panchanama was made in his presence nor any experiment of ultra-violet lamp was carried out. Nothing is alleged against this witness as to why he is involving accused in the instant case. In our opinion, he being a responsible officer working as a senior clerk in the Sales Tax Department, his evidence inspires confidence and, therefore, he is a reliable witness.His evidence is also corroborated by Manoharlal Chavda, PW 3 Ex. 22, serving as Extension Officer in the Taluka Panchayat, Bhachau where the accused no.1 was also serving. In fact, he was sitting in the same room where the accused as well as other senior clerks were sitting. According to him, the incident had taken place at about 4.00 or 4.15 p.m. on 2.8.1984 when the accused no.1 entered his place of sitting in the office. At that time, Police Inspector Shri Sharma came there and asked the accused no.1 to sit as it is and to take out everything from the pocket. The accused no.1 thereafter took out handkerchief containing three notes of Rs. 50/- each. Thereafter, an experiment with ultra-violet lamp was carried out and there was an emission of light blue fluorescent from handkerchief as well as currency notes. According to him, at that time, the Police Inspector, ACB, his staff and four staff members of the Office of the Sales Tax Department were present. A minor contradiction has been brought out from the cross examination of this witness wherein he had stated that the accused no.1 had taken out handkerchief from the right front portion of his pant. In our opinion, the aforesaid contradiction will not change the situation inasmuch as the accused no.1 in fact did take out handkerchief containing currency notes. It was suggested to him that because of difference of opinion, he was giving false evidence to which he had denied. In our opinion, in absence of any specific instance regarding difference of opinion, the aforesaid suggestion is too

general to discard the evidence of this witness. We are clearly of the view that witness Manoharlal being the colleague of the accused no.1 has no reason to falsely involve the accused no.1 in a serious offence of corruption.

8. Police Inspector H.D.Sharma,PW 4 Ex.23 has given all the details from the time he recorded the complaint of the complainant till he obtained sanction to prosecute the accused no.1 which we have referred while narrating the facts. Needless to say that his evidence is reliable and, therefore, acceptable. Nothing much less any enmity has been alleged in the cross examination of this witness and not a single reason has been given to discard the testimony of this witness.

9. The Supreme Court,in the case of Hazari Lal Vs. State (supra) while appreciating the evidence of the Investigating Officer has observed that " Where the evidence of the Police Officer who laid the trap is found entirely trustworthy, there is no need to seek any corroboration. There is no rule of prudence, which has crystalized into a rule of law, nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case, a Court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally,in the fact and circumstances of another case, the Court may unhesitatingly accept the evidence of such an Officer.It is all a matter of appreciation of evidence and on such matters, there can be no hard and fast rule, nor can there be any precedential guidance. " In our opinion, considering the facts and circumstances of the present case, we unhesitatingly accept the evidence of Police Inspector Sharma. Thus, even if we ignore the evidence of the complainant, in our opinion, the conviction can be based relying upon the evidence of Police Inspector Sharma. In the instant case, as observed earlier, the evidence of panch no.1 Tulsidas as well as Manharlal, PW 3,in our opinion, is sufficient to hold the involvement of accused no.1 in the commission of offence. Thus,considering the evidence on record, we are clearly of the opinion that the prosecution has successfully established the charge levelled against the accused no.1.

As far as the accused no.2 is concerned, we are of the opinion that the part played by him is of only taking the currency notes from the complainant. He has

merely passed on the same to the accused no.1. In other words, he had not retained the amount. Technically, it can be said that he abetted while accepting the amount for accused no.1 and thereby committed offence punishable under section 165-A of the IPC. However, in absence of any evidence regarding his prior meeting with the complainant demanding the amount for accused no.1 and the complainant having acted in furtherance of the same, it would not be proper for us to convict accused no.2 for the offence for which he was charged merely because he was there on the day in question and had accepted the amount from the complainant and passed on the same to the accused no.1.In any case, after lapse of so many years, even if another view is possible, we would not like to reverse the order of acquittal passed in favour of accused no.2.

10. With regard to the contention of using anthracene powder for the trap and no explanation by the prosecution having been coming forth as to why the phenolphthalein powder was not used and,therefore, the accused is entitled to be acquitted, we may only observe that there cannot be any hard and fast rule that the prosecution must use only phenolphthalein powder for the trap. The decision cited by Mr. Shah in the case of Gopalla Chhipa, relying on the decision of the Supreme Court in the case of Khilli Ram Vs. State of Rajasthan, 1985 SCC (Cr) 24 (equivalent AIR 1985 SC 79) wherein it is laid down that if a trap is laid for a public servant,it is desirable that the marked currency notes which are used for the purpose of trap are treated with phenolphthalein powder so that the handling of such marked currency notes by the public servant can be detected by chemical process and the Court does not have to depend on oral evidence which is sometimes of a dubious character for the purpose of deciding the fate of a public servant. In view of the fact that when the apex Court has held that it is desirable to use phenolphthalein powder, it cannot be contended that it is a mandatory requirement. Therefore, the findings of this Court in the case of Gopalla Chhipa (supra) relying on the decision of Allahabad High Court in the case of Devendra Narain Vs. State of UP (supra), that the use of phenolphthalein powder is a mandatory requirement, in our opinion, is contrary to the observations of the apex Court in the case of Khilli Ram (supra). In our opinion, in the instant case, the evidence on record is not of a dubious character. As stated above, the evidence in the instant case consists of three independent witnesses; all of them are public servants and have no axe to grind against the accused no.1 and once their evidence is accepted as a reliable

evidence, merely because the test is not carried out with phenolphthalein powder, that fact by itself, will not lead to acquittal of the accused no.1.

11. In view of the above discussion, in our opinion, the prosecution has successfully established the charge levelled against the accused no.1. Suffice it to say that we are in total agreement with the reasonings of the learned Special Judge in passing the order of conviction against the accused no.1 and, therefore, we uphold the conviction of accused no.1.

12. For the reasons stated above, we are not inclined to convict the accused no.2 and, therefore, we uphold the order of acquittal passed in favour of the accused no.2.

13. Mr. Shah submitted that it would be too much if the order of sentence awarded by the learned Special Judge against the accused no.1 is confirmed. This is particularly in view of the fact that long period of 16 years from the date of the offence and 13 years from the date of the sentence has elapsed. Mr. Shah submitted that even if the trial court has awarded minimum sentence of one year, this Court, by exercising discretion, may reduce the same.

In ordinary circumstances, the long time gap between the date of the sentence and the hearing of the appeal would be the relevant consideration. However, this being a case under the Prevention of Corruption Act, if a lenient view is taken in the matter, it would carry a wrong signal. Morever, the accused no.1 in the instant case has not remained in jail as an undertrial prisoner and on the contrary, as we are told, has remained in active service for all these years and, therefore, we do not think that this is a case where we may exercise our discretion by taking a lenient view and reduce the sentence.

14. In the result, Criminal Appeal No. 858 of 1987 filed by accused no.1 Gopalbhai Oghadbhai Parekh is dismissed.

Criminal Appeal No.79 of 1988 filed by the State of Gujarat is dismissed.

At the request of Mr.Shah, time to surrender is granted to accused no.1 till 31st October 2000. However, the accused no.1 shall execute fresh bail bond before the trial court.

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